

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

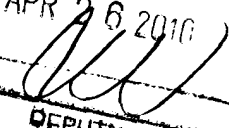
Elmer Parker,
petitioner

10-882

v.

Case No: to be assigned

T.R. Sniezek,
respondent

FILED
SCRANTON
APR 26 2010
PER 
DEPUTY CLERK

MEMORANDUM OF LAW IN SUPPORT OF
MOTION PURSUANT TO 28 U.S.C. § 2241

The pro-se petitioner, Elmer Parker, respectfully approaches this most Honorable Court, pursuant to 28 U.S.C. § 2241, whereas, "a writ of habeas corpus under § 2241 is available to a federal prisoner who does not challenge the legality of his sentence by challenges instead its execution subsequent to his conviction. Carmon v. United States Bureau of Prisons, 234 F.3d 269, 632 (2nd Cir. 2001).

A habeas corpus petition is the proper mechanism for a prisoner to challenge the "fact or duration" of his confinement. Preiser v. Rodriguez, 411 U.S. 475, 498-499, 36 L. Ed. 2d 439, 93 S. Ct. 1827 (1973).

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STATEMENT OF JURISDICTION

Under 28 U.S.C. § 2241(c), habeas jurisdiction "shall not extend to a prisoner unless...he is in custody in violation of the constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). A federal court has subject matter jurisdiction under § 2241(c)(3) if two requirements are satisfied:

(1) the petitioner is "in custody"

(2) the custody is "in violation of the constitution or laws or treaties of the United States".

28 U.S.C. § 2241(c)(3); *Maleng v. Cook*, 490 U.S. 488, 490, 109 S. Ct. 1923, 104 L. Ed. 2d 540 (1989). The federal habeas statute requires that the petitioner be in custody "under the conviction or sentence under attack at the time his petition is filed." *Lee v. Stickman*, 357 F.3d 338, 342 (3d Cir. 2004) (quoting *Maleng*, 490 U.S. at 490-91).

This court has subject matter jurisdiction under § 2241 to consider the instant petition because petitioner challenges the legality of his CCC placement by the BOP under federal law, and he was incarcerated in New Jersey at the time he filed the petition. See *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 242-44 (3d Cir. 2005); see also *Spencer v. Kemna*, 523 U.S. 1, 118 S. Ct. 978, 140 L. Ed. 2d 43 (1998).

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PROCEDURAL HISTORY

The petitioner, Elmer Parker, who is currently confined at F.C.I. Schuylkill, in Minersville, Pa. exhausted his administrative remedies fully to the B.O.P., being denied on March 19, 2010. Requesting CCC/Halfway house placement of 12 months. See the attached Administrative Remedy No: 557286-A1 (BP 11). The petitioner now follows with a challenge to this decision by motion § 2241. exhibit A

REASON FOR THE PETITION

The petitioner, Elmer Parker, is requesting 12 months CCC/Halfway house placement, reason being:

1. His need is exceptional; one that exceeds normal consideration of what is the typical needs of others.

2. The transition, back into society poses a much greater, challenge for Parker than what would be the needs of the average person.

3. The 12 month request is needed to ensure Parkers' greatest likelihood of a successful transition, and adaptation back to society, and accepting responsibility for him-self, with health problems, that has rendered him disable, since the year of 2000.

(4)

4. Congress and the B.O.P. had implemented a plan to accomodate the petitioners request. The Petitioner Parker brings his claims under the:

- (1) Provision of the Second Chance Act.
- (2) The purpose and scope of CCC placements.
- (3) The standards this court has suggested in *Strong v. Schultz*, 599 F.Supp. 2d 556, (3rd Cir. 2009)
- (4) The individual needs of the petitioner.

The U.S. Dept. of Justice are in support of utilization of the half-way house programs and placement, as stated in policy statement 7310.04, Community Corrections Center. The purpose and scope, is to provide guidelines to staff regarding the effective use of Community Corrections Centers (CCC). This program statement defines placement criteria for offenders, requires that staff members start the placement process in a timely manner, and defines the circumstances when inmates may refuse Community Corrections (CC) programs. It also establishes an operational philosophy for CCC referrals that, whenever possible, eligible inmates are to be released to the community through a CCC unless there is some impediment as outlined with the policy statement itself.

RRC/CCC or as it is most commonly called, "The Half-way House" program, provides an excellent transitional environment for inmates nearing the end of their sentence. The level of structure and supervision assures accountability and program opportunities in employment counseling and placement. Participating in community-

(5)

based transitional services may reduce the likelihood of an inmate with limited resources from recidivating, and this is the focus of Parker's claims, requests, and purposes. This program and the placement of 12 months, would afford him avenues to perfect other area's of concerns that he will encounter upon him being released from prison and re-entering into society. Congress also, has supplemented this already established program, to afford upon reasonable consideration the placement of 12 months into such a program. See the 2007 Second Chance Act, 18 U.S.C. §§ 3621 and 3624.

However, the B.O.P. has had some difficulties in how to decide and what to consider in their determination process, to place an inmate in RRC for a period of 12 months.

The petitioner will offer this court the understanding of *Strong v. Schultz*, 599 F.Supp. 2d 556, U.S. Dist. LEXIS 15332 (2009 3rd Cir.) to ask for this standard of consideration.

CASE SUMMARY

PROCEDURAL POSTURE:

Petitioner prisoner filed an application for a writ of habeas corpus under 28 U.S.C.S. § 2241 challenging the date set by respondent (BOP) for his pre-release custody placement in a residential re-entry center or community corrections center (CCC). Prisoner was granted 28 U.S.C.S. § 2241 habeas relief because BOP, in determining community corrections center (CCC) placement, abused its discretion in relying on memorandum, which constrained staff discretion to designate inmates to CCC for duration that would provide greatest likelihood of successful reintegration, contrary to 2nd Chance Act.

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OVERVIEW:

The BOP determined that the prisoner was entitled to 6 months' pre-release custody placement in a CCC until his release date. The prisoner's habeas petition sought a CCC placement of 12 months. The court had subject matter jurisdiction under § 2241 to consider the petition because the prisoner challenged the legality of his CCC placement under federal law and was incarcerated in New Jersey at the time he filed the petition. The court excused the failure to exhaust administrative remedies because, given that it took 5 months to exhaust administrative remedies the first time around, dismissal of the petition as unexhausted would moot the 28 U.S.C.S. § 2241 claim through no fault of the prisoner's. The court held that, by denying staff the discretion to recommend a placement longer than 6 months, without advance written approval, the BOP's memorandum was inconsistent with the Second Chance Act's amendments to 18 U.S.C.S. § 3624(c). Accordingly, because the prisoner's CCC placement was determined pursuant to those impermissible limitations, the BOP abused its discretion in determining that the prisoner's placement would be for 6 months.

OUTCOME:

The court granted the writ and remanded the matter to the BOP for re-determination of the prisoner's placement date. The court instructed the BOP to consider the prisoner for a longer placement in a CCC in accordance with the Second Chance Act and without regard to the memorandum. The Second Chance Act modifies 18 U.S.C.S. § 3624(c) by:

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- (1) doubling the pre-release placement period.
- (2) requiring the Bureau of Prisons to make community corrections center placement decisions on an individual basis
- (3) requiring the BOP to ensure that, consistent with the factors in 18 U.S.C.S. § 3621(b), the duration of the placement period gives the inmate the greatest likelihood of successful community reintegration.

18 U.S.C.S. § 3624(c). Obviously, an underlying premise of these amendments is that the more time an inmate spends in a CCC before he or she is released from BOP custody, the more likely it is that his or her community reintegration will be successful.

The Second Chance Act, 18 U.S.C.S. §§ 3621, 3624, limits the (BOP)*s discretion in determining the placement duration by requiring that each placement is of sufficient duration not to exceed 12 months to provide the greatest likelihood of successful reintegration into the community. 18 U.S.C.S. § 3624(c)(6). By increasing the placement period to 12 months and requiring the BOP to ensure that placements are long enough to provide the greatest likelihood of successful reintegration, Congress intended that each inmate would be considered for a placement of the longest duration, 12 months, although the ultimate placement may be less than 12 months, if warranted by application of the 18 U.S.C.S. § 3621(b) factors, namely the nature and circumstances of the offense, the inmate's history and pertinent characteristics, and any statement by the sentencing court. court.

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The BOP abused its discretion in the manner they decided the petitioner's request. Through counsel, the petitioner STRONG had argued that he was deprived of "the individualized consideration" for RRC placement for a period of up to one year on the basis of the neutral criteria indentified by congress in 18 U.S.C. § 3621(b). "Instead of striving to implement the intent of congress," to provide the greatest likelihood of successful reintergration into the community. The petitioner Parker must reiterate this standard of consideration and now that the courts and the BOP has some established history in determining whether an inmate needs - fits the provisions as outlined by congress to consider an individual for a period of 12 months placement in RRC.

THE PETITIONER PARKER REQUEST, POSES AN UNIQUE SITUATION.

Elmer Parker request 12 months placement in the RRC program to afford him the greatest likelihood of successful reintergration into the community. But Parker's situations extends beyond the provisions set out in the Second Chance Act. Parker asks for consideration besides those provisions, and not only the individual needs of the petitioner but to have an "understanding", of the responsibility I have to my son's needs and view my situation from that of a parent besides being an inmate. "Parker being a parent," that need to give more to his son than he has to give; a parent who needs to prepare to give his organs if it is able to be done; a parent who has

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came to the cross-roads of life and realizes "the value of freedom," to allow him to be in a position to be able to aid in the process that could save his son's life. Without making self-serving statements the petitioner will present as much evidence from the best records he has available to support his request.

A point to consider: 18 U.S.C. § 3553(a), supports a finding that in imposing a sentence, the sentencing goal is to consider the "need for rehabilitation" as well as punishment for the crime.

Parker's request, absorbs issue's and concerns that extends beyond just reintergration back into the community, but affords him the seed that will assist development in all other area's of life's responsibilities. Planning starts now and each step is essential. I need the year half-way house in various ways so that it would help promote my successful transition back into society, in some ways if considered under the same standards of Strong - - - compounded by the "personal" and individual needs that the Second Chance Act offers. The court would see that Parker's request should be granted.

FACTS: see exhibit B

(1). I am now 37^{years} old, and have 4 children. My son Elijah has serious health problems at a young age. He needs a kidney, and has growing complications. Medical records will be submitted to support this statement. My son is No #1 on a kidney donors list. Call Winthrop-University Hospital/Winthrop Pediatric Associates, Children's Kidney and Bladder Center, 120 Mineola Blvd Suite 210, Mineola, NY 11501. Per: Manju Chandra, MD, FAAP Chief, Pediatric

(10)

Nephrology.

This 12 month placement would not only afford me to be able to physically hold my son, and give him moral support but to be able to physically have myself evaluated if I could donate my kidney to my son.

My son and I both have, O+ blood type that is rare in itself, if in the event it becomes necessary, I want to be available and this requires pre-planning. See exhibit B

The prison staff is aware of my son's condition and has been very considerate, in allowing me additional phone minutes in which was for the communication with my son, sometimes from a hospital bed. See exhibit C

The 12 month half-way house program would provide me a greater time period to adjust, and further accept my responsibilities as a father to prepare myself, and have doctors to examine and evaluate my organs for possible removal.

(2) I have a health problem myself. I've been declared disable since the year 2000. I receive social security benefits. Call any Social Security Administration Agency. I am 6'3" and weigh 300+ pounds. I have chronic asthma. I need the 12 month half-way house program to get connected with all available resource's Centers and Agencies. I need respiratory products, also to reapply for medicare, and social security. This process often takes a 1 year time period in itself. I'll need some form of income, but the half-way house would provide me with housing until that determination process is done over again. Social Security evaluations determine the process in

(ii)

into which my benefits are provided. Being in a large city, this process often can be lengthy. see exhibit D

(3) When I left the streets, I was a notable member of the Bloods. I've since renounced my association, while in prison as well as in my community. There will be adjustments I'll have to face and handle with discernment, adapting to my changed life-style. The extended prison time in the RRC, will aid in this adjustment.

(4) My son may need additional health-care coverage, and medical attention, that the present insurance does not cover. Although, I am or at least prior to my prison incarceration, receiving social security benefits, and did not have gainful employment. I was working toward, employment in the entertainment business. See Exhibit E. The petitioner had an offer to sign a contract with Recording label of Shady Records/Eminem (ex.E), the famous Rap producer, and performer, and still has this opportunity. If successful as planned, the income could work wonders for my son. I still have the opportunity to do so, the production company has contacted me as recent as Feb. 2010, to check my prison release status. With a few months in a studio, I could be ready to accept that challenge, will still having all other prepared plans actively in operation to achieve the best possible result for my son, myself, and my community plus family, while for-filling my obligations to the B.O.P. This would afford me the time needed to adjust plan, prepare, and adapt and accept all responsibilities that I'll inherit upon exiting prison, while still serving my prison sentence. Living as example of a completely reformed and rehabilitated productive member of

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society. Let alone being an example to my community of no longer being apart of a gang, or supporting that lifestyle or conduct. The "12 month half-way house" would water the seed, that the time I spent in prison and the needs of my son have --- instilled in me to do better and achieve the goals that I've set to accomplish. While in the RRC program all the necessary and essential ingredients that are a part of my pre-release plan can be nurtured and pruned. The half-way house itself provides classes, designed to educate, inform, improve one's social skills, living skills, problem solving with relationship issue's, and other supporting aspects that helps one with re-establishing himself to street life. This would be a golden opportunity for myself and would benefit all parties who would have an interest in my success, to include, the BOP, society, all in the intents of congress' purpose of the Second Chance Act. I am the model candidate for such program, and ask to be placed in RRC FOR A PERIOD OF 12 MONTHS.

RRC assignments are governed by 18 u.s.c. § 3624(c)(1), which provides as follows:

The Director of the [BOP] shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity "to adjust to" "and prepare" for the re-entry of that prisoner into the community. Such conditions may include a community correction facility. 19 U.S.C. § 3624(c)(1). congress has granted the BOP not only the discretion to determine where to house an in-

(13)

mate, but also the discretion to determine, through the individualized consideration required by the SCA, the length of an inmates RRC placement. See id. § 3624(c)(6) (requiring the BOP to issue new regulations designed to ensure the RRC assignments are:

- (a) conducted in a manner consistent with section 3621(b) of this title;
 - (b) determined on a individual basis;
 - (c) sufficient duration to provide the greatest likelihood of successful reintegration into the community.
- (emphasis added).

Further, the statute sets the maximum amount of time that a prisoner can spend at a RRC, as not more than 12 months, but does not set any minimum amount of time that a prisoner must spend at a RRC. Id. § 3624(c)(1); see also Miller v. Whitehead, 527 F.3d 752, 756 (8th Cir. 2008) (quoting § 3624(c)(1)); Stewart v. Cruz, No. 08-4380 (ADM/RLE), 2008 U.S. Dist. LEXIS 112231, 2008 WL 3893600, at *2 (D. Minn. Aug. 20, 2008) (The statute itself clearly indicates, on its face, that the BOP is to determine, on an individual basis, how much time each Federal Prisoner should spend at an RRC. The statute sets a maximum amount of time that a prisoner can spend at an RRC--not more than twelve (12) months--but the statute does not set any minimum amount of time that a prisoner must spend at an RRC). And neither the SCA nor any other statutory authority requires transfer of an inmate to a RRC. See Elwood v. Jeter, 386 F.3d 842, 847 (8th Cir. 2004) (18 U.S.C. § 3624(c) does not require placement to a CCC. It only obligates the BOP to facilitate the prisoners transition

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from the prison system...The obligation is qualified by the phrase "to the extent practicable."); see also 18 U.S.C. § 3624(c)(4) (providing that the statute does not limit or restrict the authority of the BOP under 18 U.S.C. § 3621(b), to designate the place of the prisoner's imprisonment).

Elmer Parker request, fits squarely into the design and intents of congress, and if this court and the staff of the BOP, would apply the two approaches in their assessment of its determination in the present case.

(1) the individualized consideration

(2) to the extent practicable....

Parker has stated and submitted, more convincing evidence than can be disputed of his situation he will inherent by the acceptances of his responsibility, to himself, his son, his family, to his community, as an example of a reformed rehabilitated prior convicted felon. Success can be achieved, if giving all practicable tools and opportunities, based on my individualized need. This vision that is before me was the result of the findings of the study that prompted congress to give a person in my situation the greatest possible likelihood of success to make a positive transition back into society and maintaining that success, of course one must also be "willing". Elmer Parker is willing to commit to change. My responsibilities of life and the health of my son, my new attitude towards life in general, to include my age suggest that recidivism risk is greatly reduced. Recidivism rates decline relatively consistently as age increase". From 35% under age 21, to 9.5% over age 50. See CHC of the Fed. Sentencing Guidelines page 12.

(15)

IN CLOSING

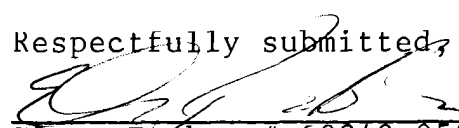
The petitioner will submit this court the purpose and findings of the study that now affords me this Second Chance. I believe the 1st opening phrase say it all, See (April 9, 2008 P.L. 110-199, § 3, 122 Stat. 658):

(A) Purpose, the purposes of the Act are-

(1) TO BREAK THE CYCLE OF CRIMINAL RECIDIVISM.

The Second Chance act, and the placement of 12 months would give me the view of living in prison while living in free society at the same time. Observing what is behind me while seeing what life can offer me in the present future. It would be the awakening of the reality of "CHOICES", we are a product of our own choices. I respectfully request to be placed in the RRC program for a period of 12 months. See Exhibit E F.

Respectfully submitted,


Elmer Parker # 68949-053
FCI-Schuylkill
Po Box 759
Minersville, Pa 17954

PROOF OF SERVICE

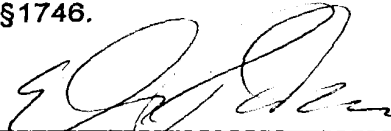
I certify that on 4/20/2010 (date) I mailed a copy of this brief and all attachments via first class mail to the following parties at the addresses listed below:

Clerk of Courts
235 N. Washington Ave
Scranton, Pa, 18501

PROOF OF SERVICE FOR INSTITUTIONALIZED OR INCARCERATED LITIGANTS

In addition to the above proof of service all litigants who are currently institutionalized or incarcerated should include the following statement on all documents to be filed with this Court:

I certify that this document was given to prison officials on 4/20/10 (date) for forwarding to the Clerk of Courts. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. §1746.



Signature

Dated: April 20 2010

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EXHIBIT A

Administrative Remedy No. 557286-A1
Part B - Response

This is in response to your Central Office Administrative Remedy Appeal in which you request 12 months Residential Reentry Center (RRC) placement.


The issue of RRC recommendation is within the authority of the Warden as set forth in Program Statement (P.S.) 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure. Determinations are based on the individual's needs, existing community resources, institutional adjustment, length of sentence, and the need to provide for the safety and security of the general public. As a result of the Second Chance Act of 2007, recommending RRC placement and the length also involves an individual assessment of five factors from 18 U.S.C. § 3621(b) that include the resources of the facility contemplated, the nature and circumstances of the offense, the history and characteristics of the prisoner, any statement by the court that imposed the sentence, and any pertinent policy statement issued by the U.S. Sentencing Commission.

Our review revealed the Warden and Regional Director have adequately addressed the issues raised in your appeal. You were evaluated for pre-release RRC placement pursuant to the Second Chance Act. Upon review of your individual case, along with consideration of the above factors and the criteria in 18 U.S.C. § 3621(b), staff determined an RRC placement of 180 days was appropriate for your transitional needs. Staff refer inmates for pre-release placement to the appropriate Community Corrections Manager (CCM), but the final decision as to the community program or placement length is within the discretion of the CCM. You will be notified of the final decision. We concur with the actions of staff and find them appropriate.

Your appeal is denied.

March 19, 2010

Date



Harrell Watts, Administrator
National Inmate Appeals

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: PARKER, ELMER 68949-053 3-B F.C.I. Schuylkill
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

Elmer Parker appeal is based on the factor's Considered verses the needs of the petitioner's; the authority of the Policy Statement verses the intents of Congress for implementing the Second Chance Act; the Policy statement verses the Statute, 7310.04 verse 18, U.S.C. 3624, I have personally contacted owners/manager of a Half-way House in my Sentencing district and they have confirmed, they can house's and have bed space for such persons to serve 1 year in its program. Concerning my son need for the Kidney, I must be out of prison in order for the proper test can be preformed to determine if I am a match, this need to be done in advance. I need 12 month to prepare for this, very possible course of action, among other necessary rehabilitation needs.

11-26-09

DATE

Elmer Parker JR.

SIGNATURE OF REQUESTER

Part B - RESPONSE

DATE

GENERAL COUNSEL

ORIGINAL: RETURN TO INMATE

CASE NUMBER: _____

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL



SCHUW 540*23 *
PAGE 001 *

SENTENCE MONITORING
COMPUTATION DATA
AS OF 06-23-2009

* 06-23-2009
* 13:09:52

REGNO...: 68949-053 NAME: PARKER, ELMER

FBI NO.....: 777756RA2
ARS1.....: SCH/A-DES
UNIT.....: 3
DETAINERS.....: NO

DATE OF BIRTH: 12-17-1972

QUARTERS.....: C07-216L
NOTIFICATIONS: NO

PRE-RELEASE PREPARATION DATE: 10-29-2011

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
THE INMATE IS PROJECTED FOR RELEASE: 03-21-2012 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEW YORK, EASTERN DISTRICT
DOCKET NUMBER.....: CR-04-915-01
JUDGE.....: FEUERSTEIN
DATE SENTENCED/PROBATION IMPOSED: 11-07-2006
DATE COMMITTED.....: 04-14-2008
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED.:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE.....: 136

OFF/CHG: 18:922(G)(1) AND 924(A)(2) POSSESSION OF A FIREARM BY A FELON

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 100 MONTHS
TERM OF SUPERVISION.....: 3 YEARS
NEW SENTENCE IMPOSED.....: 55 MONTHS
BASIS FOR CHANGE.....: COURT ORDER MODIFYING SENTENCE
CLASS OF OFFENSE.....: CLASS C FELONY
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: C/S TO NY STATE SENT
DATE OF OFFENSE.....: 06-30-2004

G0002

MORE PAGES TO FOLLOW . . .

EXHIBIT B

February 28, 2007

Corrine Benchimol, M.D.
Mount Sinai Medical Center

1 Gustave L Levy Place
New York NY 10029

RE: ELIJAH XAVIER PARKER
DOB: 12-04-92

Dear Corrine:

I am referring Elijah Xavier Parker, a 14-year-old African American boy to you for evaluation of live related renal transplantation. I first saw him on February 26, 2007, when he was transferred from Nassau University Hospital for management of end stage renal disease. Elijah was diagnosed with nephrotic syndrome at 8 years of age and was initially steroid responsive with multiple relapses in the next year and half. He then became steroid unresponsive. A renal biopsy showed minimal changes. He was treated with Cytoxan with partial remission. In the summer 2005, he relapsed and did not remit thereafter. A repeat renal biopsy in November 2005 was reported to have focal segmental glomerulosclerosis. He was treated with mycophenolate mofetil for six months without change in his proteinuria. He was started on cyclosporine 100 mg twice a day about two months ago. Third renal biopsy performed at Stony Brook on 2/7/07 showed 62 glomeruli of which 39 were globally sclerotic and 20 had segmental sclerosis; there was significant tubulointerstitial inflammation and fibrosis.

Xavier's renal function has declined extremely rapidly in the last five months. His serum creatinine was 0.7 mg% in September 2006, 1.3 mg/dL on October 14, 2006, 1.2 mg/dL in November 2006, 2.6 mg/dL on December 02, 2006, 3.1 mg/dL on January 12, 2007, and 5.3 mg/dL on February 21, 2007. At his admission to Nassau University Hospital on February 21, 2007, his serum albumin was 1.6 g%, blood bicarbonate 16 mMol/L and hematocrit 29% and he received albumin infusions for three days for diuresis.

February 28, 2007

Page 2.

RE: ELIJAH XAVIER PARKER
DOB: 12-04-92

On admission to SCH, his serum creatinine on February 27, 2008, was 7.7 mg% with BUN 45 mg% and cholesterol greater than 400 mg%. His T4 level was low and TSH level high hence, he was started on Synthroid 75 mcg per day.

His present medications consist of Nifedical XL 90 mg daily, labetalol 300 mg twice a day, Rocaltrol 0.25 mcg daily, PhosLo 660 mg caps 2 caps t.i.d., Epogen 8000 units subcut every week, famotidine 20 mg p.o. twice a day, Lasix 60 mg p.o. daily, Zaroxolyn 5 mg q.d., enalapril 5 mg qd 9 started on 3/1/07)and ferrous sulfate 325 mg twice a day. The cyclosporine was discontinued.

His mother is a willing donor. Elijah is O+ve, but the mother's blood group is not known. The father is not in the picture. The other siblings are all younger than 18 years of age. In case, the mother does not turn out to be a suitable donor, the family will opt for chronic peritoneal dialysis.

His mother is aware of the risk of recurrence of proteinuria in the transplanted kidney. The family has an appointment with you on March 06, 2007. The social worker in your division was informed of the patients health insurance from Affinity Medicaid.

Thanks for accepting to see Elijah.

With best personal regards.

Yours sincerely,



Manju Chandra, M.D.
Division of Pediatric Nephrology
Schneider Children's Hospital at North Shore
Professor of Pediatrics
NYU School of Medicine

MC:tsi/tt

**I was not in the picture
due to being in prison,*

Queens. Prior to his incarceration for the instant offense, the defendant was reportedly the custodial parent for those three children. The three children are cared for by the defendant's mother, who is unemployed. Neither the defendant nor his mother had contact information for Ms. Wilson, and a directory assistance telephone listing could not be independently located for her. Elijah Parker (age 13) was produced as a result of the defendant's non-marital relationship with Patricia Fells (age 35). The defendant advised that Elijah Parker resides with his mother in Roosevelt, New York. He further advised that he was in frequent contact with his son and voluntarily provided child support on an "as needed basis." The defendant advised that his son Elijah suffers from "nephronic syndrome," a kidney disorder which causes high levels of protein in the urine and swelling resulting from the buildup of salt in the body. The defendant stated that if his son ingests salty foods, he requires hospitalization. The undersigned attempted to contact Ms. Fells on several occasions; however, there has been no answer at her telephone number and no means by which to leave a message. A letter has been sent to Ms. Fells, and the Court will be notified upon her response. Notably, the defendant's Equifax report lists a child support collection account with a balance of \$5,500. During the home visit, the defendant's mother presented birth certificates for Jalon Parker, Shamear Parker, and Jamia Wilson. The defendant did not provide a birth certificate for Elijah Parker.

39. The defendant stated that he has always lived in Roosevelt, New York, with the exception of a brief period of time in his childhood when the family resided in Freeport, New York.¹ A home visit revealed that the defendant's family lives in a low-income neighborhood of Roosevelt, New York. The home, which was adequately furnished and maintained, contains seven bedrooms, two bathrooms, a kitchen, and two small living rooms. The defendant's mother, sister (Brenda Parker), and two of his children (Shamear Parker and Jamia Wilson) were present during the home visit.
40. The defendant advised that he is a member of the Velt Gangsta Lanes set of the Bloods, a violent street gang. He noted, however, that he has severed ties with the other members of the gang. No further questions were posed, as Defense Counsel was absent during the presentence interview.
41. An interview was conducted with the defendant's sister, Brenda Parker, during the home visit. Ms. Parker described the defendant as a "likeable, pleasant, giving" individual, who is a "good father" to his children. She opined that the defendant became involved in the instant offense by associating with "the wrong people." Ms.

¹The defendant's driver's license lists an address in Johnson City, New York; however, he noted that he has never lived in that city. He advised that he briefly considered relocating to Johnson City, which is located near two of his sisters' residences in Binghamton.

Winthrop Pediatric Associates
 Children's Kidney & Bladder Center
 120 Mineola Blvd Suite 210
 Mineola, NY 11501
 Phone: 516-663-4600 Fax: 516-663-8297

Patient Name: Elijah Parker
 Date of Birth: 7/21/92
 Date of Visit: 5/21/08
 Referring MD: _____

Initial Consult ☐ Follow up ☒

Allergies: _____

Ht: 162cm Wt: 42.7kg B.P. 114/74

History:

— wearing same size clothes x 3 yrs
 — feels OK on dialysis (hct
 dialysis)
 Only 2 cm A in HT since 9/07
 on diet at Mt Sinai
 Bp better control E fluid removal
 — getting home tubing T.T.S.
 Tubing during dialysis in child
 Life problem MWF

U.A.

GLU _____
 KET _____
 SG _____
 BLO _____
 pH _____
 PRO _____
 NIT _____
 LEU _____
 Other: _____

PHYSICAL EXAM:

HEENT N
 Heart N
 Lungs N
 Abd N

Lower Ext N
 Spine N
 Ext. Genitalia Tanner II pubic hair

RBC/hpf _____
 WBC/hpf _____
 Cast/hpf _____

Assessment:

— Growth rate, 2 cm from
 9/17/07
 — Delayed Puberty
 C/P

Plan/Treatment

to start 460g

Lab Results:

— PT/PTT
 — unphosphated Ca²⁺
 — urea

Medications:

— Nephrocap 2 Cap 1d
 — A Co Co₂ 2 Tab 1d
 — off Enalapril. Lecheb
 — Proton
 — Heelb
 — was not taking Olanzapine

Thank you for your referring this patient and allowing me participate in their care.

Return Visit if not

Manju Chandra, MD, FAAP
 Chief, Pediatric Nephrology

PATIENT INFORMATION
PARKER, ELIJAHREPORT STATUS **Final**QUEST DIAGNOSTICS INCORPORATED
CLIENT SERVICE 800.631.1390DOB: Age: NONE
GENDER: M Fasting: NORDERING PHYSICIAN
CHANDRA, MANJUCLIENT INFORMATION
894253
WPA-CHILDREN S KIDNEY VOIDING DYSI
120 MINEOLA BLVD.
SUITE 201
MINEOLA, NY 11501SPECIMEN INFORMATION
SPECIMEN: C4301792
REQUISITION: NONE
LAB REF NO:COLLECTED: 01/09/2008 16:00
RECEIVED: 01/09/2008 20:48
REPORTED: 01/11/2008 09:50

Test Name	In Range	Out of Range	Reference Range	Lab
CREATININE W/EGFR				LI
CREATININE		2.14 H	0.50-1.30 mg/dL	
EGFR NON AFR AMERICAN			>=60 mL/min/1.73m2	
Age and/or gender not provided. Unable to calculate.				
CBC (INCLUDES DIFF/PLT)				LI
WBC	5.2		3.8-10.8 Thous/mcL	
RBC		4.01 L	4.20-5.80 Mill/mcL	
HEMOGLOBIN		11.6 L	13.2-17.1 g/dL	
HEMATOCRIT		33.8 L	38.5-50.0 %	
MCV	84.3		80.0-100.0 fL	
MCH	29.0		27.0-33.0 pg	
MCHC	34.3		32.0-36.0 g/dL	
RDW		15.8 H	11.0-15.0 %	
PLATELET COUNT	246		140-400 Thous/mcL	
MPV	8.1		7.5-11.5 fL	
TOTAL NEUTROPHILS, %	53.9		38-80 %	
TOTAL LYMPHOCYTES, %	33.6		15-49 %	
MONOCYTES, %	8.5		0-13 %	
EOSINOPHILS, %	3.5		0-8 %	
BASOPHILS, %	0.5		0-2 %	
NEUTROPHILS, ABSOLUTE	2803		1500-7800 Cells/mcL	
LYMPHOCYTES, ABSOLUTE	1747		850-3900 Cells/mcL	
MONOCYTES, ABSOLUTE	442		200-950 Cells/mcL	
EOSINOPHILS, ABSOLUTE	182		15-550 Cells/mcL	
BASOPHILS, ABSOLUTE	26		0-200 Cells/mcL	
DIFFERENTIAL	An instrument differential was performed.			
TACROLIMUS (FK506)		19.1 H	3.0-15.0 ng/mL	TBR

The consensus document ("Therapeutic Monitoring of Tacrolimus (FK506)" Ther. Drug Monit. 1995: Jusko, WJ et.al.) has reported that the therapeutic range of Tacrolimus is not clearly defined, but target 12-H post-dose whole blood concentrations are 5-20 ng/mL early post-transplant, and 24-H post-dose concentrations are 33 to 50 percent less than the corresponding 12-H levels.

Performing Laboratory Information:

LI Quest Diagnostics 575 Underhill Blvd Syosset NY 11791 Laboratory Director: Era Khurana, M.D.
TBR Quest Diagnostics One Malcolm Avenue Teterboro NJ 07608 Laboratory Director: William E. Tarr, M.D.

PARKER, ELIJAH - C4301792

Page 1 - End of Report

To fax to
Dr. Corinne Benck
Veyor

MAR-27-2008 12:45 FROM: PED 5 NORTH 5166639214

TO: 8297

P: 1/2



WINTHROP UNIVERSITY HOSPITAL

Care Without Compromise

Patient PARKER, ELIJAH
Attending

Birth Date 12/04/1992
Pt # 1808698

Sex M
MR # 80086465

Rm/Bed N55607
Adm Date

CT19

Mar 26, 2008 23:10

02849 MOTRONI BETTY, M.D. CT ABDOMEN WITH CONTRAST
CT of the abdomen and pelvis:

History: Status post removal of renal transplant. Evaluate for collection.

Multiple - axial images were obtained through the abdomen and pelvis after administration of oral and intravenous contrast.

The visualized lung bases are unremarkable.

The liver and spleen appear homogeneous. The spleen appears somewhat prominent however. The native kidneys are small in size consistent with the history of renal failure. The pancreas and adrenals are unremarkable.

The small and large bowel are of normal caliber. Evaluation is somewhat limited due to the poor oral contrast opacification. There is focal infiltration of the subcutaneous fat with low density extending through the anterior abdominal wall musculature. This connects to an irregular low density collection with an ill-defined enhancing wall which extends inferiorly into the right lower quadrant. The collection measures 2.9 x 1.4 cm in greatest diameter on image 97 and measures 4.2 cm in craniocaudal extent. There is a focus of gas in this collection on image 99. There is infiltration of the adjacent fat. The differential diagnostic possibilities include abscess collection and seroma. This was discussed with Dr. Grossman on 3/27/2008 at 11:45 p.m. There are scattered subcentimeter left paraaortic, aortocaval and paracaval nodes.

The urinary bladder is only partially distended limiting evaluation. There is a question of urinary bladder wall thickening versus under distention.

Impression:

Limited due to poor oral contrast opacification
Irregular gas containing collection in the right lower quadrant measuring 2.9 x 1.4 x 4.2 cm may represent abscess versus seroma.
Correlate clinically
Other findings as above

3/26/08 PT IS IN DIALYSIS UNTIL 4:30PM - WE WILL CALL BACK FLOOR WHEN PT IS

Page created: Thursday, March 27, 2008 2:02 PM For: RE7177

Ruth Badler, D.O.
Dan Barlev, M.D.
Brian Buonocore, M.D.
Asante Dickson, M.D.
Barbara L. Eisenkraft, M.D.
Susana H. Fuchs, M.D.
Sidney Glanz, M.D.
Man Hon M.D.
Gerald A.L. Irwin, M.D.
Douglas S. Katz, M.D.



Care Without Compromise

120 Mineola Blvd., Suite 10, Lower Level, Mineola, NY 11501
Phone 516-663-4510 Fax 516-663-3699
www.winthrop-radiology.com

Anca Kranz, M.D.
Richard A. Losada, M.D.
Jonathan S. Luchs, M.D.
Sabrina Mahboob, M.D.
A. Orlando Ortiz, M.D.
Donald B. Price, M.D.
Rakesh Shah, M.D.
Wei Wen Sung, M.D.
Sharon Taylor, M.D.
Elizabeth Yung, M.D.

General Radiology Multi Detector CT Scan MRI Nuclear Medicine Ultrasound

Chandra, Manju
Chandra, Manju
120 MINEOLA BOULEVARD
MINEOLA, NY 11501

Re: PARKER, ELIJAH
DOB: 12/04/1992 16 Y
MRN: D00600048526

HIPS BILATERAL
Thursday, April 2, 2009

CLINICAL HISTORY: Low back pain. Bilateral hip pain.

PELVIS AND BILATERAL HIPS: Frontal view of the pelvis and frog-lateral views of the hips were obtained bilaterally and demonstrate widening and medial slipping of the epiphysis consistent with underlying slipped capital femoral epiphysis. The trabecular pattern of the osseous structures appears coarse likely related to the patient's known renal failure. The remainder of the examination is unchanged from the prior study from 11/18/2008.

IMPRESSION:

Findings consistent with bilateral slipped capital femoral epiphysis.

The above findings were discussed with Dr. Chandra the at 2:23 p.m. via telephone on the date of the examination.

THANK YOU FOR THE COURTESY OF THIS REFERRAL.

End of diagnostic report for accession: 13431150

Electronically Signed By: MAZZIE, JOSEPH DO RADIOLOGIST 04/02/2009 2:20 PM

A handwritten signature in black ink, appearing to be "Mazzie", is written over a horizontal line.

Ruth Badler, D.O.
Dan Barlev, M.D.
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General Radiology Multi Detector CT Scan MRI Nuclear Medicine Ultrasound

Chandra, Manju
Chandra, Manju
120 MINEOLA BOULEVARD
MINEOLA, NY 11501

Re: PARKER, ELIJAH
DOB: 12/04/1992 16 Y
MRN: D00600048526

LUMBAR SPINE 4 VIEWS
Thursday, April 2, 2009

HISTORY: Back pain.

Lumbar spine: Frontal, lateral and bilateral oblique views of the lumbar spine were obtained and demonstrate a coarsened trabecular pattern consistent with the patient's known history of renal failure. There is no fracture, or subluxation. There is spina bifida defect of the S1 vertebral body. The vertebral body heights and intervertebral disc spaces are grossly unremarkable. Incidental note is made of a nonobstructive bowel gas pattern and a prominent amount of stool within the colon.

IMPRESSION:

No fracture or subluxation.

THANK YOU FOR THE COURTESY OF THIS REFERRAL.

End of diagnostic report for accession: 13431149

Electronically Signed By: MAZZIE, JOSEPH DO RADIOLOGIST 04/02/2009 2:25 PM

A handwritten signature in black ink, appearing to be "Mazzie", is written over the electronic signature line.

MAR-27-2008 12:45 FROM: PED 5 NORTH 5166639214

TO: 8297

P: 1/2



WINTHROP UNIVERSITY HOSPITAL

Care Without Compromise

Patient PARKER, ELIJAH
Attending

Birth Date 12/04/1982
Pt # 1808698

Sex M
MR # 80066485

Rm/Bed N55607
Adm Date

CT18

Mar 26, 2008 23:10

02849 MOTRONI BETTY, M.D. CT ABDOMEN WITH CONTRAST
CT of the abdomen and pelvis:

History: Status post removal of renal transplant. Evaluate for collection.

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The visualized lung bases were unremarkable.

The liver and spleen appear homogeneous. The spleen appears somewhat prominent however. The native kidneys are small in size consistent with the history of renal failure. The pancreas and adrenals are unremarkable.

The small and large bowel are of normal caliber. Evaluation is somewhat limited due to the poor oral contrast opacification. There is focal infiltration of the subcutaneous fat with low density extending through the anterior abdominal wall musculature. This connects to an irregular low density collection with an ill-defined enhancing wall which extends inferiorly into the right lower quadrant. The collection measures 2.9 x 1.4 cm in greatest diameter on image 97 and measures 4.2 cm in craniocaudal extent. There is a focus of gas in this collection on image 99. There is infiltration of the adjacent fat. The differential diagnostic possibilities include abscess collection and seroma. This was discussed with Dr. Grossman on 3/27/2008 at 11:45 p.m. There are scattered subcentimeter left paraaortic, aortocaval and paracaval nodes.

The urinary bladder is only partially distended limiting evaluation. There is a question of urinary bladder wall thickening versus under distention.

Impression:

Limited due to poor oral contrast opacification
Irregular gas containing collection in the right lower quadrant measuring 2.9 x 1.4 x 4.2 cm may represent abscess versus seroma. Correlate clinically
Other findings as above

3/26/08 PT IS IN DIALYSIS UNTIL 4:30PM + WE WILL CALL BACK FLOOR WHEN PT IS

Page created: Thursday, March 27, 2008 2:02 PM For: RE7177

EXHIBIT C



**U.S. Department of Justice
Federal Bureau of Prisons**

FCI Schuylkill, Minersville, PA

January 7, 2010


MEMORANDUM FOR T. R. SNIEZEK, WARDEN

FROM: J. Petrucci, Unit Manager

A handwritten signature in dark ink, appearing to be "J. Petrucci".

SUBJECT: Request for Telephone Minutes
PARKER, Elmer
Reg. No. 68949-053

Unit staff have verified that inmate Parker's son suffered a mild stroke, but is in stable condition. He previously received an organ transplant and is a frequent patient at Nassau County Medical Center, NY. Parker has exhausted his telephone minutes for the month and will not revalidate until January 28, 2010. Therefore, he is requesting additional telephone minutes to maintain contact with his son and monitor his condition. The Unit Team has no objection to granting an additional 100 telephone minutes based upon these circumstances and Parker's positive adjustment at this facility.

 Approve 100 Minutes

_____ Deny 100 Minutes


T. R. Sniezek, Warden

EXHIBIT D

U.S.A. v. Elmer Parker
Docket No: 04-CR-915-01
Sentence Date: March 2, 2006

ADDENDUM TO THE PRESENTENCE REPORT

Objections

By the Government

To date, the Government has not submitted any objections to the presentence report.

By the Defendant

To date, Defense Counsel has not submitted any objections to the presentence report.

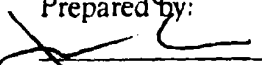
Additional Information

Subsequent to the disclosure of the above-captioned individual's presentence report, the undersigned was contacted by Patricia Fells, mother of the defendant's son, Elijah Parker (age 11). Ms. Fells described the defendant as "helpful" and a "very good and caring father;" however, although the defendant was required to pay court-ordered child support in the amount of \$25 on a monthly basis, he failed to do so. Ms. Fells stated that she did not expect him to fulfill this minimal support amount, due to his disability (asthma). She noted that the defendant maintained frequent contact with his son, and often took the son to doctor's appointments. Ms. Fells is employed as a teacher's aide, and is the sole care provider for Elijah Parker.

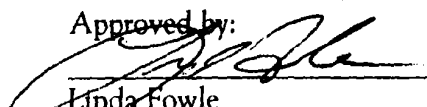
RESPECTFULLY SUBMITTED:

TONY GAROPPOLO
CHIEF U.S. PROBATION OFFICER

Prepared by:


Jennifer Connelly
U.S. Probation Officer

Approved by:


Linda Fowle
Supervising U.S. Probation Officer

Date: February 8, 2006

documentation of his income during this period. His statements regarding the receipt of disability benefits were corroborated by his mother.

54. Between 2000 and 2002, the defendant reportedly sold rap music albums recorded by himself. He advised that he sold his albums from "out of [his] car" in the Roosevelt, New York area. He stated that he earned between \$200 and \$300 per week (net) during this period. The defendant advised that just prior to his arrest for the instant offense, he was approached to enter into a contract to record his music by representatives of Shady Records, a hip-hop record company operated by artist Eminem. Due to the nature of the defendant's employment during this period, his income could not be independently verified. The defendant provided no documentation of his income during this period. His statements regarding his income during this period were corroborated by his mother.
55. From 1999 to 2000, the defendant was reportedly employed as a security guard for Phoenix Security located in Brooklyn, New York. He stated that he earned \$200 per week, and left when his temporary term of employment had expired. The defendant provided no documentation of his income during this period. His statements regarding the receipt of disability benefits were corroborated by his mother. The defendant's employment during this period could not be verified, as there is no directory assistance listing for the business. The defendant provided no documentation of his income during this period. His statements regarding his employment during this period were corroborated by his mother.
56. Between 1988 and 1999, the defendant was reportedly financially supported by his mother. This information was corroborated by his mother.
57. In 1988, the defendant was employed as a cart collector at Waldbaum's Supermarket in Merrick, New York. He stated that he earned \$100 per week and left due to the temporary nature of the job. A written request for verification of employment has been sent, and a response is awaited. The defendant provided no documentation of his income during this period. His statements regarding his employment during this period were corroborated by his mother.
58. Prior to 1988, the defendant was reportedly financially supported by his mother. This information was corroborated by his mother.
59. The defendant stated that he has never filed income tax returns. In response to a written request for verification, representatives of the New York State Department of Taxation and Finance advised that there are no tax records for the defendant. A written request for verification of non-filing has also been sent to the Internal Revenue Service, and a response is awaited. Based on the information provided by him, it appears that he was required to do so from 1999 to 2002.

48. Medical records provided by the Nassau County Correctional Center indicate that the defendant has been prescribed an albuterol inhaler for asthma.

Substance Abuse

49. The defendant advised that he consumes alcohol on one occasion every two to three months. He stated that on each occasion he ingests one to two "shots" of cognac or rum.
50. The defendant stated that he began smoking marijuana at 21 years of age and last used the drug approximately two years ago. He noted that he smoked marijuana on approximately two to three occasions per month. The defendant reported that he attended a Narcotics Anonymous program in 1998, but continued to use marijuana sporadically. The defendant's mother had no knowledge of his use of drugs or alcohol. The defendant advised representatives of the Pretrial Services Agency that he has not smoked marijuana in 10 years.

Education and Vocational Skills

51. Reportedly, the defendant attended the ninth through eleventh grades at Freeport High School in Freeport, New York from approximately 1987 to 1989. He advised that he left school due to his father's illness, and to attend to "family responsibilities." The defendant reported that he earned average grades and exhibited no disciplinary problems. Records of attendance have been requested, and a response is awaited. The defendant's mother corroborated his statements regarding education during this period. The defendant provided no educational documentation.
52. Reportedly, the defendant attended the seventh and eighth grades from approximately 1985 to 1987 at Dodd Junior High School in Freeport, New York. The defendant asserted that he earned average grades and exhibited no disciplinary problems. Records of attendance have been requested, and a response is awaited. The defendant's mother corroborated his statements regarding education during this period.

Employment Record

53. The defendant stated that from 2002 until the date of his arrest, he received Social Security benefits due to a disability arising from his asthma. He advised that he received benefits totaling \$611 per month (net). A written request for verification of the defendant's receipt of such benefits has been requested from the Social Security Administration, and a response is awaited. The defendant provided no

EXHIBIT E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, : CR 04 915
v. : U.S. Courthouse
ELMER PARKER, : Central Islip, N.Y.
Defendant. : TRANSCRIPT OF SENTENCE
November 7, 2006
-----X 11:15 a.m.

BEFORE:

HONORABLE SANDRA J. FEUERSTEIN, U.S.D.J.

APPEARANCES:

For the Government: BENTON J. CAMPBELL
United States Attorney
100 Federal Plaza
Central Islip, New York 11722
By: NICOLE BOECKMANN, ESQ.
Assistant U.S. Attorney

For the Defendant: JASON L. RUSSO, ESQ.
626 REXCORP. Plaza
Uniondale, New York 11556

Court Reporter: HARRY RAPAPORT, C.S.R.
United States District Court
100 Federal Plaza
Central Islip, New York 11722
(631) 712-6105

Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

1 THE CLERK: United States v. Elmer Parker, '04²
2 CR 915.

3 Counsel state appearances.

4 MS. BOECKMANN: Good morning, your Honor, Nicole
5 box man on behalf of the United States.

6 MR. RUSSO: Jason Russo for Mr. Parker.

7 THE COURT: This was a plea taken by Magistrate
8 Orenstein.

9 I have gone through the plea record, and I'm
10 satisfied that all the requirements were met, and that the
11 plea of guilty is accepted by this Court as well.

12 Now, with regard to sentencing, after the
13 pre-sentence report was issued there were some questions
14 about the enhancements and so forth. And I understand
15 that you have arrived at a sort of -- I hate to say
16 "settlement," but a resolution of those disagreements; is
17 that correct?

18 MR. RUSSO: Correct.

19 MS. BOECKMANN: That's correct.

20 THE COURT: I am going to ask the government to
21 state exactly what the resolution is, and I want
22 Mr. Parker, and, of course, you, Mr. Russo, to listen very
23 carefully to make certain that this comports with your
24 understanding.

25 MS. BOECKMANN: Your Honor, the initial

1 pre-sentence report was filed giving Mr. Parker an offense
2 level that was altered in an addendum that was filed by
3 the Department of Probation on November 7th -- excuse me,
4 I think November 5th, 2006. In the addendum they found a
5 total offense level of 30, the base offense level in
6 2K8.1A2 was found giving him a base offense level of 24.
7 He was afforded a two point enhancement for possessing a
8 firearm with a defaced serial number, and an additional
9 four points for possessing the firearm in association with
10 another felony offense.

11 The Department of Probation did not afford
12 Mr. Parker the three points for acceptance of
→ 13 responsibility, because he did not acknowledge the
14 relevant conduct.

15 The government does not oppose the defendant
16 receiving the three points off for acceptance of
17 responsibility, to give him a total offense level of 27.

18 It is my understanding that with a
19 recommendation by the government, the defendant received
20 the low end of the guideline range, and that the defendant
21 is in agreement that his total offense level is 27, and
22 that his criminal history category is that of level four,
23 which gives him an offense level -- excuse me, a prison
24 range of 100 months to 125 months.

25 Again, it is my understanding he will not be

1 contesting that with the understanding that the government⁴
2 will be making a recommendation that this Court sentence
3 the defendant at the bottom of the guideline range.

4 Additionally, the government will put on the
5 record, although it is not a promise of any sort that
6 should be relied on, but is willing to state that at this
7 time the United States Attorney's Office for the Eastern
8 District of New York does not have a present intent to
9 pursue additional criminal charges based on the four point
10 enhancement, or take that Mr. Parker is not contesting the
11 four points in any way as an admission of guilt by him on
12 that particular crime.

13 THE COURT: Anything else, Mr. Russo?

14 MR. RUSSO: That's my understanding, Judge. I'm
15 in agreement.

16 MS. BOECKMANN: Finally, your Honor, it is my
17 understanding that there is a separate state charge in
18 this case, and that the state court does have an intention
19 to run the criminal charges concurrently with the federal
20 charges. And the government also has no opposition to
21 that.

22 That's the request by the defendant, with
23 respect to this court or the state court, your Honor.

24 MR. RUSSO: That's correct, your Honor.

25 I can put on the record I have spoken numerous

1 times with William Donnino, the proceeding justice on the
2 state matter where Mr. Parker pled guilty to criminal sale
3 of a controlled substance, and the promised sentence is
4 four years there concurrent, and he has been adjourning
5 that sentence because it is that judge's intent to run
6 that sentence concurrently with the sentence to be imposed
7 here.

8 What I am asking this Court to do, although this
9 Court is going first, so to speak, and can't direct that
10 the sentence run concurrent with the sentence that has not
11 been imposed, but that we acknowledge and understand that
12 this is the intent of the parties here that these two
13 sentences run concurrent with each other.

14 And should the Bureau of Prisons not abide by
15 that intent, I have explained to my client that I have the
16 ability to bring him back before this Court so that he can
17 be sentenced concurrently should it not be imposed that
18 way ultimately.

19 THE COURT: It is really up to Judge Donnino.
20 And as long as he makes it clear what his intent is there
21 shouldn't be a problem.

22 Now, is your client ready for sentencing?

23 MR. RUSSO: Yes, Judge.

24 There is only one other request I'm making on
25 behalf of my client and his family, some of which appear

1 here today before the Court.

2 THE COURT: Yes.

3 MR. RUSSO: The bulk of Mr. Parker's family
4 reside on Long Island. He does have some family living in
5 Upstate New York, but the bulk of them and his children
6 reside on Long Island.

7 I'm asking this Court to make a recommendation
8 to the Bureau of Prisons, and understanding you cannot
9 bind the Bureau of Prisons, but I ask this Court to
10 recommend that he be housed as near to Long Island as
11 possible, specifically Otisville Federal Correctional
12 Center.

13 MS. BOECKMANN: Your Honor, the only additional
14 thing I would add for the record so that it is clear, is
15 that Mr. Parker understands that while the government is
16 going to recommend the low end of the guideline range,
17 like it was told to him at the time of his plea, the
18 government does not make a final determination on
19 sentencing, the Court does, after considering all the
20 factors.

21 So, even with the government's recommendation
22 this Court has a right to pursue any sentence it chooses
23 within the maximum of zero to ten years.

24 MR. RUSSO: Obviously my client had wanted a
25 much lower sentence than 100 months and asked me to ask

1 the Court to consider not imposing a guideline sentence,
2 and granting him something substantially less. He has
3 asked that based upon the things he has done since being
4 incarcerated.

5 THE COURT: I read his letters also.

6 MR. RUSSO: He has had an exemplary record when
7 he has been housed in Nassau County as well as the Queens
8 Federal Detention Center.

9 In fact, I can tell you based on personal
10 experience speaking with the guards when I visited him on
11 numerous occasions, he is well received by the staff at
12 these facilities. And they compliment him to me quite
13 often on how, not only does he treat the staff with
14 respect, but he assists them in keeping, so to speak,
15 order and resolving disputes on the tiers. They enlisted
16 his help to be a mediator, and he has been very helpful to
17 them.

18 In addition, Judge, my client has made plans to
19 reignite, so to speak, his music career.

20 Prior to being arrested he had entered into a
21 contract with a major record label to begin producing
22 music. And it was soon thereafter, within weeks of
23 signing that contract, Judge, that he had been arrested on
24 these charges.

25 He has told me, quite candidly, and I will tell

8
1 this Court, that he was on his way out of his environment,
2 on his way out of this game he has been involved in as a
3 young man. Now that he is growing older he realizes he
4 found a way out.

5 Fortunately, I have spoken with the people who
6 signed those contracts with, and they will be available
7 for him, and he will be to continue his work upon his
8 release.

9 THE COURT: How fortunate, because many people
10 in his position, being sentenced, do not have that
11 opportunity awaiting them.

12 MR. RUSSO: And that being said, Judge, I would
13 ask this Court to consider sentencing him below the
14 guideline range of 100 to 125 months.

15 THE COURT: Anything further from the
16 government?

17 MS. BOECKMANN: Nothing further, your Honor.

18 THE COURT: Does your client wish to say
19 anything?

20 (Mr. Russo confers with the defendant.)

21 MR. RUSSO: Yes, Judge, he would like to make a
22 brief statement.

23 THE COURT: Go ahead, sir.

24 THE DEFENDANT: First and foremost, I would like
25 to apologize to the Court for this incident. I would like

1 to apologize to my family.

2 THE COURT: More important.

3 THE DEFENDANT: More important.

4 To myself and get to move on with my life.

5 THE COURT: I'm sorry, what?

6 MR. RUSSO: He is ready to move on with his
7 life, Judge.

8 THE COURT: And I'm happy to hear that you will
9 have an opportunity awaiting you, and that you are making
10 the most of what you can with the time that you are
11 spending incarcerated.

12 Based upon everything that has gone on here this
13 morning, as you know, Mr. Parker, I'm not bound by the
14 guidelines, but I must consider them.

15 I am considering this range of 100 to 125 months
16 based upon the level of 27 and a prior offense level
17 category of -- a criminal category of four.

18 But I also consider the factors listed in the
19 statute, which include deterrence, not only for you,
20 because obviously you are going to be incarcerated, but
21 after you get out; and also for the community, sending a
22 message as to the penalties that are imposed when people
23 break the law in certain ways by committing certain
24 crimes, as well as the factor of rehabilitation and
25 contrition, which you have clearly shown this morning.

10

1 I tell you now that I have no objection if judge
2 Donnino thinks it appropriate and does impose a concurrent
3 sentence. I have no problem with that.

4 And I appreciate everything that you have said.
5 But, of course, there is punishment involved, too, in a
6 sentence.

7 Based upon all of that I am going to sentence
8 you to the lowest end of the appropriate guidelines, which
9 is 100 months of incarceration. I know you served a
10 substantial period of that already.

11 I'm also going to say that while I have no
12 control or even sway with the Bureau of Prisons, I would
13 certainly recommend that you be incarcerated as close to
14 the bulk of your family, as counsel put it, as possible,
15 in order that you may maintain familial relationships with
16 them.

17 So, that is the sentence. You have your right
18 to appeal. Good luck, sir.

19 MS. BOECKMANN: Your Honor, is there also going
20 to be a supervised release condition?

21 THE COURT: Yes.

22 MS. BOECKMANN: And the fine.

23 THE COURT: Yes, and there are certain special
24 conditions that apply as well.

25 MS. BOECKMANN: I believe the maximum supervised

1 release term is three years. I don't know what the
2 Department of Probation specifically recommends here.

3 THE COURT: And there are other special
4 conditions in this sentence because of the prior
5 relationship you had with certain organizations.

6 So, there will be three years of supervised
7 release following your release from prison. And you shall
8 submit to drug testing and participate in substance abuse
9 treatment with the treatment provider selected by
10 probation, whether it be out patient or residential
11 treatment. You shall abstain from all illegal substances
12 as well as alcohol, and contribute to the cost of the
13 services, which are rendered through co-payment or full
14 payment, all to be determined by probation based upon your
15 ability, and that is how well your record is, I suppose,
16 to pay, as well as the availability of third party
17 payment.

18 Importantly, you will not be permitted and you
19 shall not associate with any member or associate of the
20 Bloods or any other street gang, either in person, by
21 mail, by telephone, by computer, by any means.

22 And this shall include the wearing of any
23 colors, insignia of any type, be it something you put on
24 or that you have put on to your person, that indicates
25 such an affiliation.

1 There is also the imposition of a search
2 condition.

3 There is a \$100 special assessment.

4 And you shall submit your person, residence,
5 anything over which you have control, to a search if a
6 probation officer has a reasonable belief that contraband
7 or evidence of a violation of the conditions of release
8 may be found. Any search, of course, has to be done in a
9 reasonable time and in a reasonable manner.

10 Also, based upon the charges, any supervised
11 release term has a special condition -- as a special
12 condition has a prohibition as to the possession of a
13 firearm.

14 That is the sentence.

15 MS. BOECKMANN: No fine, your Honor, and
16 restitution is inapplicable; is that correct?

17 THE COURT: But the \$100 special assessment has
18 to be paid.

19 MR. RUSSO: Yes, I will tell the family.

20 MS. BOECKMANN: Thank you.

21

22

23 End of proceedings.)

24

25

EXHIBIT F

§ 17501. Purposes; findings

(a) **Purposes.** The purposes of the Act are--

- (1) to break the cycle of criminal recidivism, increase public safety, and help States, local units of government, and Indian Tribes, better address the growing population of criminal offenders who return to their communities and commit new crimes;
- (2) to rebuild ties between offenders and their families, while the offenders are incarcerated and after reentry into the community, to promote stable families and communities;
- (3) to encourage the development and support of, and to expand the availability of, evidence-based programs that enhance public safety and reduce recidivism, such as substance abuse treatment, alternatives to incarceration, and comprehensive reentry services;
- (4) to protect the public and promote law-abiding conduct by providing necessary services to offenders, while the offenders are incarcerated and after reentry into the community, in a manner that does not confer luxuries or privileges upon such offenders;
- (5) to assist offenders reentering the community from incarceration to establish a self-sustaining and law-abiding life by providing sufficient transitional services for as short of a period as practicable, not to exceed one year, unless a longer period is specifically determined to be necessary by a medical or other appropriate treatment professional; and
- (6) to provide offenders in prisons, jails or juvenile facilities with educational, literacy, vocational, and job placement services to facilitate re-entry into the community.

(b) **Findings.** Congress finds the following:

- (1) In 2002, over 7,000,000 people were incarcerated in Federal or State prisons or in local jails. Nearly 650,000 people are released from Federal and State incarceration into communities nationwide each year.
- (2) There are over 3,200 jails throughout the United States, the vast majority of which are operated by county governments. Each year, these jails will release more than 10,000,000 people back into the community.
- (3) Recent studies indicate that over 2/3 of released State prisoners are expected to be rearrested for a felony or serious misdemeanor within 3 years after release.
- (4) According to the Bureau of Justice Statistics, expenditures on corrections alone increased from \$9,000,000,000 in 1982, to \$59,600,000,000 in 2002. These figures do not include the cost of arrest and prosecution, nor do they take into account the cost to victims.
- (5) The Serious and Violent Offender Reentry Initiative (SVORI) provided \$139,000,000 in funding for State governments to develop and implement education, job training, mental health treatment, and substance abuse treatment for serious and violent offenders. This Act seeks to build upon the innovative and successful State reentry programs developed under the SVORI, which terminated after fiscal year 2005.
- (6) Between 1991 and 1999, the number of children with a parent in a Federal or State

correctional facility increased by more than 100 percent, from approximately 900,000 to approximately 2,000,000. According to the Bureau of Prisons, there is evidence to suggest that inmates who are connected to their children and families are more likely to avoid negative incidents and have reduced sentences.

(7) Released prisoners cite family support as the most important factor in helping them stay out of prison. Research suggests that families are an often underutilized resource in the reentry process.

(8) Approximately 100,000 juveniles (ages 17 years and under) leave juvenile correctional facilities, State prison, or Federal prison each year. Juveniles released from secure confinement still have their likely prime crime years ahead of them. Juveniles released from secure confinement have a recidivism rate ranging from 55 to 75 percent. The chances that young people will successfully transition into society improve with effective reentry and aftercare programs.

(9) Studies have shown that between 15 percent and 27 percent of prisoners expect to go to homeless shelters upon release from prison.

(10) Fifty-seven percent of Federal and 70 percent of State inmates used drugs regularly before going to prison, and the Bureau of Justice statistics report titled "Trends in State Parole, 1990-2000" estimates the use of drugs or alcohol around the time of the offense that resulted in the incarceration of the inmate at as high as 84 percent.

(11) Family-based treatment programs have proven results for serving the special populations of female offenders and substance abusers with children. An evaluation by the Substance Abuse and Mental Health Services Administration of family-based treatment for substance-abusing mothers and children found that 6 months after such treatment, 60 percent of the mothers remained alcohol and drug free, and drug-related offenses declined from 28 percent to 7 percent. Additionally, a 2003 evaluation of residential family-based treatment programs revealed that 60 percent of mothers remained clean and sober 6 months after treatment, criminal arrests declined by 43 percent, and 88 percent of the children treated in the program with their mothers remained stabilized.

(12) A Bureau of Justice Statistics analysis indicated that only 33 percent of Federal inmates and 36 percent of State inmates had participated in residential in-patient treatment programs for alcohol and drug abuse 12 months before their release. Further, over one-third of all jail inmates have some physical or mental disability and 25 percent of jail inmates have been treated at some time for a mental or emotional problem.

(13) State Substance Abuse Agency Directors, also known as Single State Authorities, manage the publicly funded substance abuse prevention and treatment system of the Nation. Single State Authorities are responsible for planning and implementing statewide systems of care that provide clinically appropriate substance abuse services. Given the high rate of substance use disorders among offenders reentering our communities, successful reentry programs require close interaction and collaboration with each Single State Authority as the

program is planned, implemented, and evaluated.

(14) According to the National Institute of Literacy, 70 percent of all prisoners function at the lowest literacy levels.

(15) Less than 32 percent of State prison inmates have a high school diploma or a higher level of education, compared to 82 percent of the general population.

(16) Approximately 38 percent of inmates who completed 11 years or less of school were not working before entry into prison.

(17) The percentage of State prisoners participating in educational programs decreased by more than 8 percent between 1991 and 1997, despite growing evidence of how educational programming while incarcerated reduces recidivism.

(18) The National Institute of Justice has found that 1 year after release, up to 60 percent of former inmates are not employed.

(19) Transitional jobs programs have proven to help people with criminal records to successfully return to the workplace and to the community, and therefore can reduce recidivism.

(April 9, 2008, P. L. 110-199, § 3, 122 Stat. 658.)

April 20, 2010

To: Clerk of Courts

From: Elmer Parker #

Reference: filing of motion pursuant to § 2241

Be advised that I have requested the B.O.P

take \$5.00 out of my account and mail to this clerks
office for it's filing fee's, also I have served a

Copy with proof of service, to, Dept. of Justice,

228 Walnut St. Suite # 220, Harrisburg, Pa, 17108, Please notify
me when this has been filed,

Thank you



Elmer Parker # 68949-053

F.C.I. Schuykill

P.O. Box 759

Minersville, Pa, 17954

Date: 04/14/2010
Time: 11:33:10 am

Location: SCH

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS

Request for Withdrawal of Inmate's Personal Funds

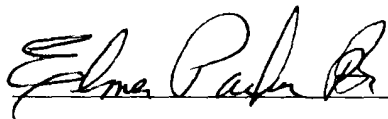
Encumbrance No.: 2727

Please charge to my account the sum of **\$5.00** and authorize the same to be paid to :

Contact/FMIS Certification Address

Of Courts, Clerk
235 N. WASHINGTON ST.
Scranton
Pennsylvania 18501
United States

Purpose: Court Fees
Check Memo:



(Signature of Inmate)

68949053 - PARKER, ELMER

(Inmate Register No./Name)

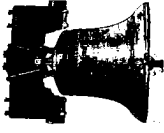
(Signature of Approving Official)

(Signature of Deposit Fund Tech)

(Payment #)

The inmate's personal account has been charged in the amount indicated above.

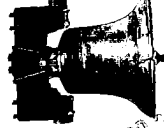
USA FIRST-CLASS



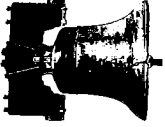
USA FIRST-CLASS



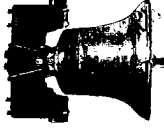
USA FIRST-CLASS



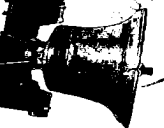
USA FIRST-CLASS



USA FIRST-CLASS



USA FIRST-CLASS



⇄68949-053⇄

Clerk Of Courts
235 N. Washington ST.
Scranton, PA - 18501
United States

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APR 26 2010

PER

DEFENSE CLERK

F.C.I. Schuykill
P.O. Box 759
Minersville, Pa, 17954

NO FEE
ENCLOSURE
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